

Part 2 -- Remarks

This Amendment and Response is responsive to the office action mailed June 30, 2004. In that office action, claims 1, 3-27 were rejected as anticipated by Silverman (US 4,998,354). Reconsideration of this anticipation rejection is respectfully requested.

Claims 1-27 are pending.

Claim Amendments

Claims 12 and 27 have been amended to correct antecedent basis errors and to improve their form. No new subject matter has been added.

Anticipation Rejection

The office action is ambiguous and inconsistent in regard to whether claim 2 has been rejected. It is presumed for purposes of this Amendment and Response that claim 2 was intended to be rejected.

The Silverman reference fails to disclose the subject matter recited in pending claims 1-27. In order to constitute a valid anticipation rejection, the reference must disclose exactly the same subject matter as is recited in the rejected claims. This is simply not the case for the reasons set forth below, among others.

Claim 1, and dependent claims 2-27, recite a method of evaluating clearance between the support contour of a seat cushion and an adjacent anatomical portion of a person sitting on the seat cushion. Thus, in the manner stated, the pending claims call for evaluating a space or clearance between a seat contour and the anatomy of the person seated on the seat cushion.

Silverman does not evaluate a space or clearance between the seat contour of a cushion and the anatomy of a person seated on the cushion. Silverman describes a system for mapping or determining the contour of the person's anatomy, so that the information can be used in constructing a seat cushion. See Silverman at column 2, lines 47-50 and lines 52-57; column 3, lines 67-68; and column 7, lines 48-58, among other places.

The pending claims require, in the manner set forth and among other things, (a) a seat cushion, (b) seating a person on the seat cushion, and (c) a clearance measurement device located between the person's anatomy and the support contour of the seat cushion.

Silverman fails to disclose both a seat cushion having a support contour and a clearance measurement device which measures the clearance between the support contour and the anatomical portion, as required in the pending claims. In Silverman, the entire support surface moves to map the shape of the person's anatomy. The entire support surface is divided into "resilient, compressible elements 18" (column 3, lines 56-68), each of which entirely moves up or down while in direct contact with the anatomy. There is no clearance between those elements and the anatomy, because those elements directly contact the anatomy as they must do to map the shape of it.

One possible interpretation of Silverman that might have been applied the anticipation rejection is that the entire movable support surface constitutes the claimed seat cushion. However under this interpretation, Silverman fails to disclose a clearance measurement device which measures clearance between the support surface of the seat cushion and the anatomy. Only the resilient compressible elements which form the seat cushion under this interpretation are in contact with the anatomy, and there is no clearance between those elements and the anatomy, and there is no clearance measurement device between those elements and the anatomy.

The other possible interpretation of Silverman that might have been applied in the anticipation rejection is that the movable support surface is the clearance measurement device. Under this interpretation, there is no support contour of a seat cushion relative to which the entire movable support surface measures clearance.

Simply stated, the Silverman reference can not be interpreted to simultaneously disclose the claimed seat cushion with its support contour and the clearance measurement device which interacts with the seat cushion support contour, as the

pending claims require, and which must be disclosed to support a valid anticipation rejection under Silverman.

Claims 2-11 require, in the manner specifically set forth therein, that the clearance measurement device include impression foam having a crushable characteristic, and that the clearance is evaluated by the extent of collapse of the impression foam.

The support surface elements 18 of Silverman are described as "resilient" and "compressible." Since the Silverman elements 18 are resilient and compressible, they cannot be crushable as required in claims 2-11. Moreover, being resilient and compressible, the clearance cannot be evaluated by the extent of collapse of the crushable impression foam. Once the anatomical portion is removed from the resilient compressible support surface elements 18 of Silverman, the elements 18 rebound to their original position which would prevent any measurement of the extent of collapse.

Claims 4-8 recite specific characteristics of the crushable foam. The importance of these characteristics is described in the specification at page 14, line 14 to page 16, line 23. Silverman has no comparable disclosure, and has no recognition of the importance of these characteristics of the foam.

Claims 12-20 require, in the manner set forth, that the clearance measurement device include a piece of putty-like substance having a malleable characteristic which indents, and that the clearance is evaluated by determining the extent of the indentation of the malleable putty-like substance. The resilient, compressible elements 18 of Silverman are not malleable putty-like substances which intent.

Claims 11 and 20 require the clearance measurement device to be enclosed within a flexible plastic envelope. Silverman fails to disclose the use of a flexible plastic envelope to enclose any aspect of his device.

Claims 21-25 require, in the manner set forth, that the clearance measurement device include a flexible envelope containing fluid, and that the clearance is evaluated by determining the amount of fluid remaining in the envelope after the anatomy has

contacted the clearance device against the support contour. Nothing in Silverman relates to fluid displacement for the purpose of making measurements.

Claimed 27 recites, in the manner set forth, determining which of two pre-existing seat cushions is more appropriate for a user, by evaluating the relative clearances from the different support contours of the two cushions. Silverman has no such disclosure, since Silverman is focused entirely on fabricating a seat cushion with a support surface that matches and conforms exactly to the anatomy of the user.

Conclusion

Silverman simply fails to disclose, and therefore cannot anticipate, the recited subject matter of pending claims, for the reasons set forth above and others which are apparent from the recitations in the pending claims themselves. Accordingly, it is respectfully requested that the anticipation rejection based on Silverman be withdrawn, and the pending claims allowed.

The Examiner is requested to contact the undersigned by telephone to discuss any issues which may inhibit the immediate allowance of the claims.

Respectfully submitted,

Date: 9/30/04

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